

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
STATESVILLE DIVISION
5:04CR65-v

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.)
)
MATTHEW JOHNSON)
)
Defendant.)

)

ORDER

THIS MATTER is before the Court upon the Defendant's Application to Proceed In Forma Pauperis, filed 31 October 2006.

A review of the record of this case reflects that following the filing of the indictment in which he was named, the defendant appeared before the Court and requested court-appointed counsel. Based upon the representations which the Defendant made at that time, the Court granted the Defendant's request, and by Oral Order filed 24 November 2004, the Court appointed Matthew Joseph, to represent the Defendant.

However, four months later, on 22 March 2005, the Defendant retained the law firm of Tin, Fulton, Greene & Owen to represent him. Consequently, on 19 April 2005, Defendant's court-appointed counsel, Matthew Joseph, filed a Motion To Withdraw as counsel. On 21 April 2005, the Court granted the court-appointed counsel's Motion and allowed the law firm of Tin, Fulton, Greene & Owen to represent the Defendant in the above matter.

Eventually, the Defendant was prosecuted and convicted to all three counts charged in his indictment. On 23 October 2006, the Court sentenced the Defendant to a total of 181 months

imprisonment. Subsequently, the Defendant gave his notice of appeal on 31 October 2006. Moreover, the Defendant now has filed the subject Application by which he presumably seeks to proceed on appeal without having to pay the costs associated with this action.

In support of his Application, the Defendant represents that he is incarcerated, and that he is currently not employed at the institution. Although the Application reflects that in the past twelve months Defendant has received money from gifts or inheritances, the Defendant states that he has no cash, and no checking or savings accounts. The Defendant also reports that he does not own any real estate, stocks, or bonds, nor any other thing of value.

However, a review of the Defendant's Mecklenburg County Commissary account reveals that he has received, on average, over \$150 dollars a month in deposits over the past year totaling approximately \$1,885.00 with a current balance of \$153.33. Furthermore, Defendant does not give any explanation as to the source of money in which he answered yes in question number three on his Application.

Consequently, based upon the foregoing information, the Court holds that Defendant has the means to pay the filing fee associated with his appeal and his IFP Motion is denied.

IT IS, THEREFORE, ORDERED that Defendant's Motion to Proceed In Forma Pauperis is **DENIED**.

Signed: November 13, 2006



Richard L. Voorhees
United States District Judge

